Congress only extended to strictly navigable waters, and that when it was impossible, from natural or artificial causes, for ships or boats to go upon a stream, the jurisdiction of Congress did not cover it. *Com.* v. *King*, 150 Mass. 221. But if floatable streams are public highways, they may well be, and often are, highways over which passes interstate and foreign commerce, and as much subject to the control of Congress as railways, canals, or telegraph lines. Doubtless, until Congress does legislate, the States may do so, and require men floating logs or other produce to obey such regulations as are necessary for the public good. A State has as good a right to enact that logs shall only be floated in rafts (*Harrigan* v. *Conn. River Lumber Co.*, 129 Mass. 580) as to require all locomotive engineers to be examined for color-blindness. *Nashua, etc. R. R.* v. *Ala.*, 128 U. S. 96. But if Congress chose to make a general law for the government of floatable streams in so far as they are channels for interstate and foreign commerce, it would seem there would be very little doubt of its constitutionality. There is here another instance of the great scope of the power to regulate commerce vested in the national government, a power which, if the people once get the idea of using it to attain their ends, will extend in a hundred directions beyond what has hitherto been dreamed of.

LIQUOR SALOON A NUISANCE *per se.* — Another restriction has been placed upon the liquor traffic by the decision of the Indiana Supreme Court, in the recent case of *Haggard* v. *Stehlin*, 35 N. E. Rep. 997, to the effect that a duly licensed and properly conducted liquor saloon is a nuisance *per se.* The plaintiff was the owner and occupier of a dwelling-house in a residential portion of Indianapolis. A business block was erected on an adjoining lot, and the defendant opened in it the saloon in question. The plaintiff thereupon brought suit to recover damages for the injury caused by the proximity of the saloon; and it was admitted that the property of the plaintiff had been damaged both for selling and rental purposes. The license granted to the defendant, by the board of commissioners of the county, was set up as a defence, to which the plaintiff demurred. There was no complaint of any improper conduct, or violation of the law, or anything injurious to health or offensive to the senses; so the question came squarely before the court, whether this lawful business, carried on in a lawful manner, could be a nuisance; and the court decided affirmatively, Howard, C. J., and Hackney, J., dissenting.

In a question of nuisance it has been considered as well settled that the injury, annoyance, and inconvenience are regarded rather than the particular trade or occupation from which these resulted; and also that the injury inflicted must be the result of some tangible physical interference on the part of the defendant with the ordinary comforts of life. 1 Wood, Nuis. §§ 2, 3. Were these legal propositions disregarded in the present case? There are two grounds that may be gathered from the discussion of the court upon which the decision may possibly rest. The first is that the business is of such a character that it is impossible to rid it of those attendant circumstances and conditions which of themselves constitute a nuisance because of their necessarily injurious results. 2 Wood, Nuis. 3 ed. § 809. Such a position might be taken where the occupation complained of was itself illegal, and where specific allegations of discomfort or annoyance were unnecessary, as in the case of brothels (11 Md. 128)

or gaming-houses (Bac. Abr. *Nuis.* a; 10 Mod. 336), or where liquor was unlawfully sold (41 N. J. L. 6); but to apply the same doctrine to a business legalized by the legislature, duly licensed and properly conducted, in a suit where the only objections alleged were to the saloon itself, simply as a saloon, seems to be begging the question; yet the court proceed to do it. A brew-house has been held a nuisance, but always on the same ground as a lime-kiln, chandler's shop, or swine-sty (Waterman's Eden, 264, note), — that unwholesome odors were emitted. A stable is not a nuisance *per se* (36 Ala. 546), nor a tenpin alley, though kept in connection with a lager beer saloon (5 N. J. L. 158), nor a billiard room when conducted in an orderly manner. (8 Cow. 139.) In *Ffingst* v. *Senn*, (Ky.) 23 S. W. 358, where the complaint was that a picnic ground was a nuisance *per se*, the court said: "There can be beer-gardens and pleasure resorts, music and dancing, and yet no nuisance set up. Admittedly, the conduct of such exercise or the running of such a business may result in inconvenience and annoyance to neighbors not participating. It may render the location less eligible as a place of residence; . . . but, nevertheless these places and modes of amusement are not to be condemned or denounced as nuisances in themselves." Were there no other possible ground for the decision in the principal case, it might be inferred that the learned court thought it should take judicial notice of "all the incidents usually attendant upon such a place;" upon which incidents it laid great stress, but of which there was neither allegation nor proof.

The other, and at least more satisfactory view of the case is from a moral standpoint. The establishment of a liquor saloon in close proximity to one's dwelling would undoubtedly be a source of great annoyance and perturbation, and tend to render one's property in the vicinity less valuable to rent or sell. Even anti-prohibitionists might consistently object to such surroundings. It is not necessary for one to possess a "delicacy of taste or a refined fancy" to be disturbed by the sale of intoxicating liquors near one's residence; yet it is submitted that, where it is impossible to show any annoyance through the bodily senses, and where the only ground of complaint is that the defendants' trade is morally offensive and distasteful, the formerly established rule, as applied in *Wescott* v. *Middleton*, (43 N. J. Eq. 478), would not lead to the same conclusion as that reached in *Haggart* v. *Stehlin*.

Scope of the Power to Regulate Commerce. — The development at the hands of the courts of the power of Congress to regulate commerce has so frequently taken an unexpected turn, that one can never be sure that the last word has been spoken. In the case of *Swift* v. *Phila. Ry. Co.*, 58 Fed. Rep. 858, is a wholly new illustration of the wide-reaching nature of this power. The facts of the case are simple. The plaintiff began suit in the State court to recover for excessive charges paid for the carriage of goods from Chicago to New York. The case was removed to the Federal courts because of the diverse citizenship of the parties, and heard before Grosscup, J., who has since attracted attention by other rulings on the Interstate Commerce Act. In a short opinion he held that the action would not lie, — that although the general rule of the common law forbade a common carrier to exact unreasonable charges, yet this rule could have no application to an interstate law, that being